

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC)**

RESOLUTION NO. 304

**CHEHALIS POWER GENERATING, L.P.
CHEHALIS GENERATION FACILITY
WATER USE MITIGATION – HAMILTON WATER RIGHTS**

BACKGROUND. On March 6, 2001, Governor Locke signed Amendment No. 1 to the Site Certification Agreement (SCA) authorizing Chehalis Power Generating, L.P. (Chehalis Power) to construct and operate the Chehalis Generation Facility (CGF), a combustion turbine project near Chehalis, Washington. SCA Article VI.A requires Chehalis Power to use its best efforts to acquire 102 acre feet of water rights prior to commencement of commercial operation of the CGF. Article VI.A.3 provides for the acquired water rights to be dedicated to the Chehalis River to protect against potential impacts to the river from the use of municipal supply water during low flow periods.

Article VI.A.4 of the SCA requires that water rights dedicated to the river be in beneficial use; to the extent practicable be upstream from the City of Chehalis' water pump station; and have priority dates earlier than April 9, 1976. Chehalis Power is required to submit to the Department of Ecology (Ecology) and the Council information that all water rights proposed for acquisition are in beneficial use. Chehalis Power is required to submit that information at least 30 days before the date requested for EFSEC action.

At its September 9, 2002 meeting, the Council approved a Stipulation between Chehalis Power and Ecology Regarding Water Mitigation Procedures. The Stipulation establishes a process to facilitate evaluation and approval of proposed water rights that Chehalis Power proposes to acquire to satisfy the requirements of the SCA. The Stipulation also identifies the manner of dedicating water rights to the river. Under the Stipulation, when Chehalis Power identifies a water right for acquisition and dedication to the river, Chehalis Power and Ecology attempt to reach agreement on beneficial use status and the acre-foot quantity to be credited toward the 102 acre feet mitigation goal set forth in Articles VI.A.3 and .4 of the SCA (Acre Foot Credit). In calculating the Acre Foot Credit, Article VI.A.3 provides for a deduction of the amount that could be taken from exempt wells allowed by applicable zoning. Chehalis Power then submits a water right proposal to the Council for action. In the event that the Council approves a water right proposal, Chehalis Power and Ecology then take the necessary steps to transfer the water right to the State trust water rights program under Ecology's water right change process.

On November 12, 2002, by Resolution No. 301, the Council approved Chehalis Power's proposed acquisition and dedication of the "Reisinger" water right and determined that Chehalis Power would receive an Acre Foot Credit in the amount of 52.46 acre feet. Chehalis Power then needed to acquire and dedicate further mitigation water rights in the amount of 49.54 acre feet to satisfy in full the 102 acre foot mitigation goal of the SCA. However, issues arose during the Ecology water right change process that prompted Chehalis Power to subsequently request that the entire mitigation amount come from a portion of another right in the project area that could be dedicated to the Chehalis River.

On December 24, 2002, Chehalis Power submitted to the Council a proposal to acquire and dedicate to the Chehalis River a 52-acre foot portion of Water Right Certificate No. 03209 and 03210 (the "Hamilton Water Rights"). On February 7, 2003, Chehalis Power supplemented that proposal to acquire and dedicate to the Chehalis River a 106-acre foot portion of the Hamilton Water Rights. Chehalis Power has secured an option to acquire the Hamilton Water Rights under an agreement with the owner which will be in effect until December 2003.

The proposal included a detailed report (Beneficial Use Analysis of the Hamilton Water Rights) documenting the beneficial use history; diversion and consumptive use quantities; exempt well usage

allowed by applicable zoning; and other technical analysis and information to support the Acre Foot Credit. Water Right Certificates No. 03209 and 03210 were issued to Mr. A.L. Hamilton simultaneously; have a priority date of September 14, 1943; cover the same 400-acre tract of farmland; and have been beneficially used for irrigation. Together, the Hamilton Water Rights have a diversion quantity of 412 acre feet and a consumptive quantity of 360.6 acre feet. Chehalis Power proposes to acquire and dedicate 102 acre feet of the consumptive quantity of the Hamilton Water Rights to the river.

Chehalis Power requested a credit for the consumptive use component of the portion of the water rights to be acquired, net of the exempt well usage. By crediting only the consumptive use portion of the rights, the Council would credit Chehalis Power only for the proposed water rights' net value to the river. No credit would be allowed for the quantity historically returned to the river system after use or for the allowable exempt well usage amount.

Chehalis Power proposes to acquire and dedicate to the river the exempt well usage amount (4 acre feet) even though no credit would be allowed for this amount. Chehalis Power requests an Acre Foot Credit in the amount of 102 acre feet, and proposes to acquire and dedicate 106 acre feet to the river. Chehalis Power believes there will be additional unquantified benefits from the transfer, such as an increase in flows for the reach of the river between the diversion points and the downstream point where return flows entered the river.

Consistent with the Stipulation, Chehalis Power submitted this information and proposal to Ecology for review prior to submitting it to EFSEC. After review, Ecology concluded that the water rights meet the requirements of Articles VI.A.3 and .4 and are suitable for dedication to the river. By letter dated February 20, 2003, Ecology concurred with the proposed 102 Acre Foot Credit.

RESOLUTION. Having considered Chehalis Power's proposal, all supporting documentation, comments of Ecology and others, and the recommendation of EFSEC staff, the Council hereby takes the following action:

1. Finds that Water Right Certificates No. 03209 and 03210 meet the criteria for dedication to the Chehalis River in Article VI.A.4 of the CGF SCA;
2. Approves Chehalis Power's proposal to acquire and dedicate a portion of said water rights in the amount of 106 acre feet to the Chehalis River;
3. Determines that Chehalis Power receives an Acre Foot Credit in the amount of 102 acre feet for dedication of said water rights; and
4. Determines that Chehalis Power has fully satisfied the water mitigation requirement of Articles VI.A.3 and .4 of the CGF SCA, so long as Chehalis Power completes the water rights acquisition approved in this Resolution, and the water right change process with Ecology.

Dated and effective this 10th day of March, 2003.

Washington State Energy Facility Site Evaluation Council

By: _____
Jim Luce, EFSEC Chair

Attest: _____
Allen J. Fiksdal, EFSEC Manager